

REMARKS

Of the 52 original claims, claims 1 and 6-7 are currently amended. Due to the reorganization and amendment of the claims, a number of peptides have been deleted from claims 6 and 7. Claims 8 through 52 have been cancelled. Independent claims 59-60 and 62-63 have been added. Dependent claims 53-58 and 61 have been added. With this response, claims 1-7 and 53-63 are now pending.

Should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Applicant authorizes the Commissioner to deduct the fees from Howrey Simon Arnold & White, LLP Deposit Account No. 01-2508/11181.0027.NPUS00/BNT.

I. Restriction requirement

The Examiner required restriction under 35 U.S.C. § 121 to one of:

- Group I: Claims 1 - 7 directed towards a peptide comprising phenylalanine, leucine, alanine, and lysine, classified in class 530, subclass 300+ ;
- Group II: Claims 8-15, 17-20 directed towards a method of inhibiting the growth of cancer cells *in vitro*, classified in class 514, subclass 2;
- Group III: Claims 8-16, 18-31 directed towards a method of inhibiting the growth of cancer cells *in vivo*, classified in class 514, subclass 2.
- Group IV: Claims 32-46 directed towards a method of inhibiting bacterial cells, classified in class 514, subclass 2;
- Group V: Claims 32-43 and 47-48 directed towards a method of inhibiting fungal cells, classified in class 514, subclass 2;
- Group VI: Claims 32-43 and 49-50 directed towards a method of inhibiting protozoa, classified in class 514, subclass 2;
- Group VII: Claims 32-43 and 51 directed towards a method of inhibiting intracellular organisms, classified in class 514, subclass 2; and

Group VIII: Claims 32-43 and 52 directed towards a method of inhibiting viruses, classified in class 514, subclass 2.

Applicant elects to continue prosecution of Group I, claims 1-7 directed towards a class of peptides comprising phenylalanine, leucine, alanine and lysine residues. Please cancel claims 8-52 at this time. Applicant may pursue the non-elected claims in one or more related patent applications.

Applicant does not traverse the identification of Group I, but does respectfully disagree with the Examiner's division of the remaining claims. For example, Applicant believes that a search for the inhibition of the growth of cancer cells would encompass the Examiner's Groups II and III. As the claims of groups II-VIII are cancelled due to the continued prosecution of Group I, Applicant may further discuss the division of claims upon filing one or more divisional applications.

II. Election under 35 U.S.C. § 121

The Examiner further suggested that each different peptide sequence is considered distinct and/or independent, one from the other on the basis of physical, chemical, and biological properties and functions. The Examiner indicated that an additional election under 35 U.S.C. § 121 is required as to the elected peptide (by SEQ ID NO:).


Applicant respectfully disagrees with the need to elect a specific SEQ ID NO: peptide. Independent claim 1 describes a class of peptides having particular length and sequence properties. The specification provides a large number of example peptides within this class, and provides a wealth of assay data for the example peptides. Applicant requests that the peptides be examined as a class at this time.

Applicant similarly asserts that an election is not required for added independent claims 59-60 and 62-63.

In light of the above amendments and remarks, reconsideration of the application is respectfully requested. All amendments are made in a good faith effort to place the application in better condition for allowance and to advance the prosecution on the merits. Applicant respectfully submits that no amendments have been made to the pending claims for the purpose of overcoming any prior art rejections that would restrict the literal scope of the claims or equivalents thereof. Applicant reserves the right to subsequently take up prosecution of the claims originally filed in this application in continuation, continuation-in-part, and/or divisional applications.

The Examiner is encouraged to call the undersigned should any further action be required for allowance.

Respectfully submitted,



Christopher J. Buntel, Ph.D.
Reg. No. 44,573
Customer No. 23369
ATTORNEY FOR ASSIGNEE,
HELIX BIOMEDIX, INC.

Howrey Simon Arnold & White, LLP
750 Bering Drive
Houston, TX 77057-2198
(713) 787-1569

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